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SERVICE DATE - MARCH 22, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 390X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY–
ABANDONMENT EXEMPTION–BETWEEN LOVING AND PECOS JUNCTION, NM,
AND BETWEEN PECOS JUNCTION, NM, AND RUSTLER SPRINGS, TX

Decided: March 20, 2002

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exemption Abandonments to abandon a line of railroad between BNSF milepost 196.00 near Loving, NM, and milepost 217.20 near Pecos Junction, NM, and between milepost 0.00 near Pecos Junction, NM, and milepost 25.34 near Rustler Springs, TX, a total distance of 46.54 miles. Notice of the exemption was served and published in the Federal Register on December 28, 2001 (66 FR 67363-64).

By decision served January 28, 2002, the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA) and the exemption was made subject to several environmental conditions. As pertinent here, condition (a)(3) requires BNSF to consult with the State of New Mexico Environment Department concerning possible impacts to waters of the United States from storm water discharge and whether National Pollutant Discharge Elimination System (NPDES) permit coverage is appropriate. Condition (b) requires BNSF to retain its interest in and take no steps to alter the historic integrity of all sites or structures on the right-of-way until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

On March 5, 2002, BNSF submitted to SEA a letter seeking clarification as to whether the entire line is subject to condition (b) or just the part of the line located in New Mexico. According to BNSF, the State of New Mexico Office of Cultural Affairs, Historic Preservation Division, has indicated that there may be archaeological resources in the vicinity of the line to be abandoned that may be adversely affected during salvage operations. BNSF adds, however, that the Texas Historical Commission has indicated that no historic properties in Texas are affected by this abandonment.

As a result of the BNSF filing, SEA recommends that the historic preservation condition imposed in the January 28, 2002 decision be limited to the historic sites or structures on the section of right-of-way located within New Mexico. SEA also recommends that the storm water discharge and NPDES permit coverage condition imposed in that decision be limited to salvage operations on the section of right-of-way located within New Mexico. The proceeding will therefore be reopened and the previously imposed conditions described above will be modified

accordingly. The other conditions will remain unchanged.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Upon reconsideration, the section 106 historic condition and the storm water discharge and NPDES permit coverage condition, both imposed in the decision served January 28, 2002, are limited to the portion of right-of-way located within New Mexico.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary